

SENATE BILL 2091

By Henry

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Title 62, Chapter 36, relative to geologists and to enact the "Geologist Registration Act of 2007".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 36, is amended by deleting chapter 36 in its entirety and by substituting instead Sections 2-23 as a new chapter 36.

SECTION 2. This act shall be known and may be cited as the "Geologist Registration Act of 2007".

SECTION 3. The general assembly finds that the competent and proper application of geologic principles by geologists is vital to the lives, property, economy, security, and environment of the people of this state. In order to safeguard life, health, and property and to promote the public welfare, the practice of geology in this state is hereby declared to be subject to regulation in the public interest. Furthermore, the practice of geology is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of other learned professions in this state. The purpose of this act is to introduce additional qualifying criteria in a professional field at present only partially regulated, thereby benefiting the safety, health, and property of the people of Tennessee and promoting the public welfare. The fields of geology expected to benefit are those related to the environment, mineral and fuels exploration and development, geologic hazards, basic geologic research, and other geologic matters of concern to the people of this state.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(2) "Department" means the department of commerce and insurance;

(3) "Geologist" means a person qualified by education and practical experience to engage in the practice of geology;

(4) "Geologist-in-training" means a person who has met the educational requirements of Section 10 and has successfully passed a department approved examination covering the fundamentals of geology but is not qualified to register as a professional geologist;

(5) "Geology" means the science concerning the earth and its history including:

(A) The investigation, prediction of existence, and location of:

(i) Minerals;

(ii) Rocks;

(iii) Liquids, including groundwater; and

(iv) Gases;

(B) The natural processes that cause developments and changes in the earth; and

(C) The applied science that uses knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind;

(6) "Practice of geology" means providing geological services except as specifically exempted by this chapter. Geological services include consultation; investigation, including the collection, removal, and analysis of samples of minerals, rocks, fluids, gases, and paleontological specimens; survey; evaluation; planning; mapping; inspection of work in the field of geology; and the responsible supervision of work in the field of geology. The practice of geology means the practice of any branch of the profession of geology.

(7) "Registered professional geologist" means a person who is registered as a geologist under the provisions of this chapter;

(8) "Qualified geologist" means a person who holds a certificate as a registered geologist or registered professional geologist under the Geologists Registration Act of 1988, as amended, prior to January 1, 2008. A qualified geologist may engage in the practice of geology without obtaining a certificate of registration under this chapter until January 1, 2009;

(9) "Responsible charge of work" means accountable, independent control and direction by the use of initiative, skill, and independent judgment, of geological work or supervision of geological work; and

(10) "Subordinate" means any person who assists a registered professional geologist in the practice of geology without assuming the responsible charge of work.

SECTION 5.

No person shall:

(a) Prepare any geologic plans, reports, or documents other than a registered professional geologist or a subordinate under such geologist's direction;

(b) Practice geology in this state unless such person is registered under the provisions of this chapter. A certificate of registration is not transferable;

(c) Offer to practice geology in this state unless such person is registered under the provisions of this chapter. To offer to practice geology in this state includes the making of a verbal claim, displaying a sign or other advertisement, using letterhead, printing cards, or using in connection with a person's name any title or description stating or implying that the person is a registered professional geologist;

(d) On or after January 1, 2009, seal or stamp any plans, plats, reports or other documents with the seal or stamp of a registered professional geologist, or use in any manner the title "registered professional geologist" or the title of any registered certified specialty geologist unless registered or registered and certified under this chapter;

(e) Affix the person's signature, seal, or stamp to any geologic plans, plats, reports, or other documents after the such person's registration has expired or has been suspended or revoked, unless such person's registration has been renewed or reissued;

(f) Give any false or forged evidence of any kind to the department when seeking to obtain the person's certificate of registration;

(g) Falsely impersonate any other registrant of like or different name; or

(h) Attempt to use an expired or revoked certificate of registration or continue to practice geology at any time during a period during which the department has suspended or revoked the person's certificate of registration.

SECTION 6. This state and any county, municipality, agency, board, district, commission, authority, or other political subdivision of the state shall only contract for geological services with persons registered under this chapter or with a firm employing a registered professional geologist who shall be in responsible charge of providing such services, except as otherwise provided by this chapter.

SECTION 7. Any person, except a person exempted by this chapter, who practices or offers to practice geology in this state, is subject to the provisions of this chapter. The following persons are exempt:

(1) Persons engaged solely in teaching the science of geology or engaged solely in nonpublic geologic research in this state may pursue such teaching or research without registration. Teachers or researchers shall, however, be certified as a registered professional geologist if they wish to perform any geologic work or services for which registration as a geologist is required by this chapter;

(2) Officers and employees of the United States of America practicing solely as such officers or employees; and

(3) Employees or subordinates of a geologist holding a certificate as a registered professional geologist under this chapter acting solely as an employee or subordinate;

provided that this exemption shall not permit any such subordinates to practice geology or offer to practice geology.

SECTION 8.

(a) A sole proprietorship, partnership, or corporation that provides geological services as its primary activity may engage in the practice of geology, provided, that at least one (1) principal or officer is in responsible charge of such activity and is a registered professional geologist. A sole proprietorship, partnership, or corporation whose primary activity is other than the practice of geology may offer geological services; provided, that a registered professional geologist is in responsible charge of such activity. The exemptions of Section 7 shall apply to sole proprietorships, partnerships, and corporations.

(b) This chapter shall not be construed to prevent or to affect:

(1) The practice of any profession or trade related to geology for which a license or registration is required under any other law of this state; provided, that such work is permitted under the applicable licensing or registration law, or the right of registered professional engineers to lawfully practice foundation engineering, geotechnical engineering, soils mechanics, or other professional engineering as provided by title 62, chapter 2 or licensed architects from lawfully practicing architecture as provided by title 62, chapter 2;

(2) The practice of geology by a person who is not a resident of and has no established place of business in this state, if:

(A) Such practice in this state does not exceed in the aggregate more than ninety (90) days in any calendar year;

(B) Such person is duly licensed or registered to practice such profession in another state where the requirements for a certificate of registration or license are equivalent to or higher than those specified in this chapter for obtaining the registration required for such work;

(C) Such person files with the department, on or before entering the state for commencing such work, a statement giving the person's name, residence, the number of the person's license or certificate of registration, and by what authority such license or certificate was issued; and

(D) Such person files, upon the completion of the work, a statement of the time the person engaged in such work within the state;

(3) The practice of geology by a person who is duly licensed or registered to practice such profession in another state where the requirements for a certificate of registration or license are equivalent to or higher than those specified in this chapter and such person is not a resident of and has no established place of business in this state and such person's practice in this state will exceed ninety (90) days in the aggregate in a calendar year, if such person has filed an application with the department for a certificate of registration and has paid the fee required by this chapter. Such practice shall continue only for such time as the department requires for the consideration of the applicant for registration; or

(4) The practice of geology by a person who is duly licensed or registered to practice such profession in another state where the requirements for a certificate of registration or license are equivalent to or higher than those specified in this chapter and the person has been a resident of this state for six (6) months or less, if such person has filed an application with the department for a certificate of registration and has paid the fee required by this chapter. Such practice shall continue only for such time as the department requires for the consideration of the applicant for registration.

SECTION 9. An application for registration as a geologist shall be made under oath, and shall indicate the applicant's education and provide a detailed summary of geologic work. The

application shall be accompanied by an application fee fixed by the department, and must include a certified transcript.

SECTION 10.

(a) To be eligible for a certificate of registration, an applicant shall meet each of the following minimum qualifications:

(1) Be of good moral character;

(2) Be a graduate of an accredited college or university that has been approved by the department, with a major in geology, geochemistry, geophysics, such majors' subdivisions, or other geological sciences approved by the department. An applicant shall have successfully completed a minimum of thirty (30) semester hours, or forty-five (45) quarter hours, in the type of geological science courses ordinarily included in a degree program with a major in geology, of which at least twenty-four (24) semester hours, or thirty-six (36) quarter hours, were upper-level undergraduate geology courses, or graduate courses. The department may waive academic requirements for a person who is a qualified geologist, provided application for registration is made not later than January 1, 2009, and the applicant can provide evidence to satisfy the department that the applicant is competent to practice geology;

(3) Have at least five (5) years of professional geological experience including a minimum of:

(A)

(i) Three (3) years of professional geological work under the supervision of a registered professional geologist, a qualified geologist, a geologist registered under requirements for registration comparable to those under this chapter, or of a geologist who meets the educational and experience requirements

for registration but who is not required to be registered under the limitations of this chapter; or

(ii) Three (3) cumulative years of professional practice in responsible charge of geologic work satisfactory to the department.

(B) The following kinds of education and experience qualify toward accumulation of the required five (5) years of professional experience:

(i) Each year of graduate study shall count as one (1) year of experience; provided, that credit for graduate study or graduate courses, individually or in any combination of graduate study and courses, shall in no case exceed a total of two (2) years toward meeting the requirements of at least five (5) years of professional geological experience pursuant to this subsection (c);

(ii) The department may substitute the cumulative total of teaching or geological research of persons teaching upper-level geology courses at the college or university level for professional experience; provided, that such teaching or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to five (5) years of professional experience; or

(iii) The geologic ability of an applicant shall have been demonstrated by the applicant performing professional geologic work in a responsible position as determined by the department. The adequacy of the required supervision and experience shall be determined by the department in accordance with rules promulgated by the department; and

(4) Have successfully passed such examination or examinations developed or determined by the department to assess adequately the

knowledge and skills that are common to the competent practice of geology as a profession. The department shall waive the examination requirement for registration as a geologist of an applicant who makes written application to the department not later January 1, 2009, and who otherwise meets the qualifications of this section. Any geologist who, as of January 1, 2008, holds a certificate as a registered geologist or registered professional geologist under the Geologists Registration Act of 1988, as amended, shall be exempt from this examination requirement, unless such person's certificate is expired or revoked for a period exceeding two (2) years.

(A) Examinations shall be held at such time and place as the department shall determine.

(B) The department shall determine the fee required for examination, such fee not to exceed cost of the examination.

(b) The department shall recognize and continue to use the registration numbers of any geologist who as of January 1, 2008 holds a certificate as a registered geologists or registered professional geologist under the Geologists Registration Act of 1988, as amended, upon re-application under this chapter. Such certificate shall continue to be renewed under the established renewal cycle. The department shall also recognize and continue to use the registration number of any geologist who currently holds a certificate as a registered geologist once the examination and experience requirements qualifying such person as a registered professional geologist have been met.

SECTION 11. A person holding a license or certificate of registration to practice geology issued by proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, on the basis of comparable licensing or registration requirements, and who, in the opinion of the department otherwise meets the requirements of

this chapter, based on verified evidence may, upon application, be registered without further examination, provided that the state, agency, or country issuing the license or certificate of registration has entered into a reciprocity agreement with the department, is part of a general reciprocity agreement among all applicable states, or has established some other form of mutual recognition of registration or comity with the department.

SECTION 12.

(a) The department shall issue a certificate of registration, upon payment of the registration fee as prescribed by the department, to any applicant who complies with the requirements of this chapter. Certificates of registration shall state the full name of the registrant, bear a serial number, and be signed by the commissioner under the seal of the department. The issuance of a certificate of registration by the department shall be prima facie evidence that the person named by such certificate is entitled to all the rights and privileges of a registered geologist, so long as the certificate remains unrevoked or unexpired.

(b) Registration shall be valid for a period of two (2) years. All certificates of registration shall expire on February 1 of the year of expiration. Renewals of registration shall be in January of the year of expiration. A fee prescribed by the department shall be imposed for each late renewal of registration.

(c) Every registered professional geologist shall complete twenty-four (24) units of continuing education (CEU's) biennially as a condition of registration renewal. The registered professional geologist shall be responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the department for random post renewal audit and verification purposes. A continuing education unit is equivalent to one (1) contact hour (60 minutes), subject to the department's review. The preparation of original lectures, seminars, or workshops in geology or related subjects shall be granted

one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

(1) Proof of continuing education is satisfied with an attestation by the registered professional geologist that the registered professional geologist has satisfied the requirements of this section.

(2) A registered professional geologist selected for random audit will be required to supplement the attestation with attendance verification.

(3) The continuing education period will be from February 1 to January 31 of each biennial period.

(4) A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. A hardship may include, but not be limited to, disability, illness, extended absence from jurisdiction, or exceptional family responsibilities. Requests for hardship consideration must be submitted to the department in writing prior to the end of the registration period for which it is made.

(5) If at the time of renewal, a registered professional geologist has been registered for less than one (1) year, no continuing education is required; if registered professional geologist has been licensed for more than one (1) year, but less than two (2) years, twelve (12) hours shall be required.

(6) Continuing education shall be in a field related to geology. Approval will be at the discretion of the department under advisement from the advisory committee. CEU's earned in excess of the required credits for the two-year period may not be carried over to the next two-year period.

(7) The advisory committee shall prepare guidance, subject to the approval of the department, on categories of continuing education and the maximum credits allow for each category, as well as a list of approved professional societies and organizations.

(d) A new certificate of registration may be issued to replace any certificate lost, destroyed, or mutilated, subject to the rules of the department and payment of a fee prescribed by the department.

(e) Upon a written request accompanied by a fee prescribed by the department for change in status, a registrant shall be placed on retired or inactive status. No retired or inactive registrant shall engage in any geologic work or services for which registration as a geologist is required by this chapter. The department shall prescribe rules outlining the procedure for placing a registrant in retired or inactive status and subsequent reinstatement to active status.

SECTION 13. A registered professional geologist, upon issuance of a certificate, shall obtain a seal of the design authorized by the department, bearing the registrant's name and the legend "registered professional geologist" and identifying the state of Tennessee. All drawings, reports, or other geologic papers or documents involving geologic work as defined in this chapter, which shall have been prepared or approved by a registered geologist or a subordinate employee under such geologist's direction for the use of or for delivery to any person or for public record within this state, shall be signed by the registrant and impressed with the registrant's seal which shall indicate a registrant's responsibility for such drawings, reports, or other geologic papers or documents.

SECTION 14.

(a) There is hereby established the advisory committee for geology. The advisory committee shall be composed of seven (7) members. Six (6) members shall be appointed by the governor. The state geologist shall be a permanent ex officio member.

(b) Five (5) of the initial members of the advisory committee shall be qualified geologists. Upon the expiration of such members' terms, successor members shall be registered professional geologists. The remaining committee member shall be a resident of this state, of good moral character, and shall not be, or ever have been, engaged in the practice of geology.

(c) Within ninety (90) days after the effective date of this act, the governor shall appoint six (6) eligible and qualified persons to be members of the committee as follows:

(1) Two (2) members for terms of one (1) year each, or until June 30th of the year of expiration of the one-year term;

(2) Two (2) members for terms of two (2) years each, or until June 30th of the year of expiration of the two-year term; and

(3) Two (2) members for terms of three (3) years each, or until June 30th of the year of expiration of the three-year term.

(d) As the terms of the members expire, the governor shall appoint successors for terms of three (3) years, each such term to begin on July 1. A member's service on the advisory committee shall begin upon appointment and continue until the member's successor is appointed. Any vacancy occurring on the committee shall be filled by the governor for the balance of the unexpired term.

(e) In making appointments to the committee, the governor shall strive to ensure that the committee includes at least one (1) female, at least one (1) member of a racial minority, and at least one (1) person who is at least sixty (60) years of age. The governor shall also strive to ensure that the geologist members are from each of the following professional groupings: academic, salaried company geologist, independent or consultant geologist, governmental geologist, and a professional geologist who is also a professional engineer licensed in this state.

(f) The committee shall be administratively attached to the department's division of regulatory boards.

(g) Committee members shall receive no compensation but shall be reimbursed for actual travel and other expenses incurred in attending each meeting and in performing any other duties provided for in this chapter. All reimbursement for such expenses shall be in accordance with the comprehensive travel regulations promulgated

by the commissioner of finance and administration and approved by the attorney general and reporter.

(h) The committee shall meet at least two (2) times per year. The committee shall elect annually from its members a chair, a vice chair and a secretary. The committee shall fix the place and time of its regular meetings by order duly recorded in its minutes. Four (4) members of the committee shall constitute a quorum and four (4) affirmative votes are required for any committee action. Written notice stating the date, time and place of a special meeting of the committee and the purpose or purposes of the meeting shall be delivered to each member, either personally or by mail at least ten (10) days prior to such meeting.

(i) The committee shall advise the commissioner as to the administration and implementation of the provisions of this chapter including:

(1) Reviewing applications for registration,

(2) Reviewing complaints filed against persons, both registered and non-registered, practicing geology in the state; and

(3) Establishing guidelines for compliance with the continuing education requirements of this chapter.

SECTION 15. In addition to other powers and duties specified in this chapter, the department shall:

(a) Promulgate rules and regulations necessary to carry out the provisions of this chapter in compliance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(b) Design and adopt an official seal for registered professional geologists;

(c) Set the amount of all fees required by this chapter;

(d) Identify and approve continuing education programs for persons regulated by the department under this chapter. The department may prescribe regulations requiring continuing education as a prerequisite for renewal of certificates of registration;

(e) Receive, administer, and account for all moneys derived under the provisions of this chapter, and transfer these funds to the state treasurer who shall keep such moneys in a fund to be known as the "Geologists Fund." Such fund shall be used to defray expenses incurred in the administration of this chapter, provided, however, that any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year shall revert to the general fund;

(f) Prepare, administer, and grade examinations required by this chapter. The department shall have the authority to adopt or recognize, in part or in whole, examinations prepared, administered, or graded by other organizations, on a regional or national basis, that the department determines are appropriate to measure the qualifications of an applicant for registration as a geologist, provided that the examination questions and correct answers, and any individual applicant's completed examination, are available to the department, and that the department retains the authority to determine a passing grade for purposes of registration in this state; and

(g) Have such other powers and duties as are necessary to effectuate the provisions of this chapter.

SECTION 16.

(a) The department shall keep a public record of its proceedings and a register of all applicants for registration.

(b) All official records of the department, or affidavits by the commissioner as to the contents of such records, shall be prima facie evidence of all matters required to be kept therein.

(c) Except as otherwise provided by this subsection, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications, and other personal information submitted by applicants, except to the applicant, the department, its staff, or the advisory committee established by this chapter; and

(2) Information submitted by a reference concerning an applicant, except to the department, its staff, or the advisory committee established by this chapter.

SECTION 17. The department shall publish semi-annually a roster showing the names and places of business of all geologists registered in this state. Copies of this roster shall be placed on file with the secretary of state and the offices of the Tennessee division of geology, and furnished to any registrant upon request free of charge or to the public upon request and payment of a fee, not to exceed cost, to be established by the department.

SECTION 18. The department shall promulgate a code of professional conduct that shall be made known in writing to every registrant and applicant for registration under this chapter. The department may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of such revision or amendments.

SECTION 19. Any person may prefer charges of fraud, deceit, gross neglect, incompetence, or misconduct against any registrant. Such charges shall be in writing, shall be sworn to by the person or persons making them, and shall be filed with the commissioner.

SECTION 20.

(a) The department shall have the power to suspend, revoke, or refuse to renew the certificate of registration of any registrant who:

(1) Is found to have been convicted of:

(A) Any fraud or deceit in obtaining a certificate of registration;

(B) Any felony or any crime involving moral turpitude;

(C) Any unlawful act as set forth in this chapter; or

(2) Who is found guilty of fraud, deceit, gross neglect, incompetence, or misconduct in the practice of geology as a registered professional geologist.

(b) Any such action by the department to suspend, revoke, or refuse to renew a certificate of registration shall be taken after a hearing held in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Any administrative or judicial review of such action shall likewise be in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The department may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule promulgated to effectuate the purposes of this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(e) Members of the department are officers of the state in carrying out the duties imposed by this chapter and as such have the full measure of governmental immunity provided by law.

SECTION 21. The department may reissue a certificate of registration to any person whose certificate has been revoked upon written application to the department by the applicant, showing good cause to justify such reissuance.

SECTION 22. Legal counsel shall be provided by the division of regulatory boards.

SECTION 23.

(a) A violation of this chapter is a Class B misdemeanor.

(b) In addition to, or in lieu of, any other lawful disciplinary action under this chapter the commissioner may assess a civil penalty not exceeding one thousand dollars (\$1,000) per violation. All penalties owed under this chapter shall be paid to the department for deposit into the treasury of the state of Tennessee and shall accrue to the state and may be recovered in a civil action in the name of the state in any court of record in the county where the violation is alleged to have occurred.

(c) Any civil penalty shall be assessed in the following manner:

(1) A notice of such assessment shall be sent to the person receiving it by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may petition the commissioner for a review of the assessment;

(3) The petition for review shall be in writing, and shall be filed no later than thirty (30) days after the notice of assessment is received;

(4) If a petition for review of the assessment is not filed within thirty (30) days after the date the notice is received, then the violator shall be deemed to have consented to the assessment and it shall become final; and

(5) If a petition for review of the assessment is filed as provided by this section, then the proceedings on such appeal shall be conducted in accordance with the provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 with respect to the conduct of contested cases.

SECTION 24. Tennessee Code Annotated, Section 4-29-230(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Advisory committee for geology, created by title 62, chapter 36.

SECTION 25. If any provisions of this act or the application thereof to any person or circumstances is held invalid by any court, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

SECTION 26. For the purposes of the promulgation of rules and regulations, the provisions of this act shall take effect on becoming a law, the public welfare requiring it. The provisions of Section 14 shall take effect on becoming law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2008, the public welfare requiring it.